(2)

No. 86-1490

Supreme Court, U.S.
FILED
APR 2 1987
JOSEPH F. SPANIOL, JR.
CLERK

In The
Supreme Court of the United States
October Term, 1986

Ned R. McWherter, Governor of the State of Tennessee, and W.J. Michael Cody, Attorney General of the State of Tennessee,

Petitioners,

vs.

Leonard J. Brooks, M.D.,

Respondent.

ANSWER IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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REASONS FOR DENYING THE WRIT

The sole reason presented by the petitioners for the issuance of a writ of certiorari in this cause is the current presence in this Court of a case which has already been argued (twice) upon what may or may not be the "identical" issue as that presented herein, in *Pennsylvania et al. v. Delaware Valley Citizen's Council for Clean Air,* S.Ct No. 85-5, decided in part, — U.S. —, relevant issue reargued October 15, 1986. Petitioners assert that the granting of the writ "will prevent [this case] from becoming final . . . . [and] ensure that this Court's eventual ruling on the question common to both [cases] will apply to [this] case." [Petition for Writ of Certiorari, pp. 6-7.]

Respondent's objection to the granting of the writ centers upon the undeniable fact that these objections can be equally achieved through simpler means which do not entail any of the costs (to the respondent, to the Court, and even to the petitioners) necessitated by the granting of the writ.

Specifically, respondent notes that the decision of the Sixth Circuit Court which is appealed herein does not adjudicate a final judgment on the relevant issue, but instead merely remands the case to the District Court for further proceedings (which shall themselves be appealable if the need be perceived by either party). Thus, petitioners surely overstate the need of a writ of certiorari to "prevent [this] decision . . . . from becoming final."

In any event, a more than adequate remedy has been provided to petitioners by a stay of all further proceedings in the District Court until such time as this Court has rendered its opinion in *Delaware Valley Citizens',*

supra., granted by the District Judge on March 24, 1987. Appendix A. This will obviously ensure that the Court's ruling therein will be applied to this case.

Moreover, such reliance upon the stay granted herein by the District Court in lieu of the granting of certiorari will result in a significant savings of time, money and effort on the part of both parties and the Court, in that it will avoid the necessity of the filing of briefs for each party, as required by United States Supreme Court Rules 23.2 and 35.1, and of oral argument, as all but mandated by Rule 38.1. This is especially so inasmuch as the *Delaware Valley Citizens'* case has already been argued, and it is too late for the Court to order that the two cases "be argued together as one case", pursuant to Rule 37.3.

—o—

CONCLUSION

Inasmuch as the granting of certiorari herein would provide no benefits to either party that are not already available through less costly means, and would appear to serve no purpose but to increase the workload and costs to the parties and the Court, respondent respectfully requests that the petition for writ of certiorari be held in abeyance pending a ruling in *Delaware Valley Citizens', supra.*

Respectfully submitted,

BART C. DURHAM, III
1712 Parkway Towers
Nashville, Tennessee 37219
(615) 242-9000

Attorney for Respondent

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

LEONARD J. BROOKS, M.D., Plaintiff,	)	
vs.	)	
LAMAR ALEXANDER, Governor of the STATE OF TENNESSEE; and WILLIAM LEECH, JR., Attorney General of the STATE OF TENNESSEE, Defendants.	)	No. 79-3065-NA-CV
	)	JUDGE NIXON

MOTION TO STAY

(Filed March 18, 1987)

The defendants in this cause, the Governor and Attorney General for the State of Tennessee, respectfully request that the Court stay all further proceedings in this action until the United States Supreme Court rules on the defendant's Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit in the matter of the *Governor and Attorney General of the State of Tennessee v. Leonard Brooks, M.D.*, United States Supreme Court No. ———. (Petition for Writ of Certiorari filed March 9, 1987. The plaintiff does not oppose this Motion.

Respectfully submitted,

W. J. Michael Cody
Attorney General and Reporter

/s/ Frank J. Scanlon
Deputy Attorney General
450 James Robertson Parkway
Nashville, Tennessee 37219-5025
(615) 741-1963

ORDERED

Entered March 23, 1987.

SO ORDERED
/s/ JOHN T. NIXON
U.S. District Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Motion for Stay and Memorandum in Support thereof have been forwarded to Mr. Bart Durham, Attorney at Law, BART DURHAM & ASSOCIATES, 1712 Parkway Towers, 404 James Robertson Parkway, Nashville, Tennessee, 37219, on this 18th day of March, 1987.

/s/ FRANK J. SCANLON
Deputy Attorney General